



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Great Plains Asbestos Control, Inc.

File: B-271841

Date: July 15, 1996

Danne W. Webb, Esq., Miller Law Firm, for the protester.

Marian E. Sullivan, Esq., and Christopher L. Smith, Esq., Department of the Air Force, for the agency.

Susan K. McAuliffe, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where commercial carrier, on its own initiative, left bid package at military installation's freight terminal during an installation security exercise--where security exercise did not impede delivery to proper location specified in solicitation--and carrier made no attempt to deliver the parcel to the proper location, the bid, when received late at the required location, was properly rejected since improper government action was not the sole or paramount cause of the bid's late arrival.

DECISION

Great Plains Asbestos Control, Inc. protests the rejection of its bid as late under invitation for bids (IFB) No. F48608-96-B-0001, issued by the Department of the Air Force for asbestos abatement services.

We deny the protest.

The IFB, which established bid opening for Friday, March 15, 1996, at 2 p.m., instructed bidders to address their bids to "90th Contracting Squadron, 7505 Marne Loop" at F.E. Warren Air Force Base (AFB), Wyoming. Great Plains's bid was not included among those presented and opened at the scheduled bid opening; the protester's bid was not received at the bid opening location until Monday, March 18 at 2:15 p.m.

Great Plains states that its bid was timely received by the Air Force and should be considered for award since it was delivered by United Parcel Service (UPS) to Warren AFB's Transportation Building, the installation's freight terminal, at 10:13 a.m. on March 15. The protester explains that the UPS driver delivered the bid package to the Transportation Building, rather than the specified address of the 90th Contracting Squadron, because the base was under a security exercise

procedure at the time of delivery and, according to the UPS driver, delivery at the Transportation Building of UPS packages during such an exercise is an acceptable and customary practice. In support of its contentions, the protester provides a copy of March 15 delivery records obtained from UPS (which include the package's UPS shipping number and a computerized signature of the Air Force airman who allegedly accepted the package) and an affidavit from the UPS driver. The protester contends that government mishandling of the bid package—which package was properly addressed to the 90th Contracting Squadron and was marked "BID OPENING 2:00 PM Deliver Immediately"—was the sole or paramount cause of the bid's late receipt at the location specified in the solicitation for the delivery of bids.

The Air Force reports that, according to agency delivery records (Form 3135), the protester's bid package was not delivered to the Transportation Building until Monday, March 18. The agency states that, in accordance with its standard procedures, a Form 3135 was prepared shortly after receipt of the package and the contracting officer (to whom the package was addressed and who had been notified by Great Plains after bid opening that the firm had submitted a bid) was notified that the protester's package was available to be picked up at the Transportation Building. Upon return to his 90th Contracting Squadron Office, the contracting officer date/time stamped the protester's bid package as received at 2:15 p.m. on March 18.

The agency contends that the paramount cause of the bid's late receipt at the proper bid depository location was the failure of the protester's commercial carrier to deliver the package, as addressed, to the proper location identified in the solicitation. The agency explains that while it will accept delivery at the Transportation Building where a commercial carrier is unable to deliver the package to the addressed location, there is no agreement between the agency and UPS that packages may be delivered to the Transportation Building instead of the 90th Contracting Squadron during security exercises. The agency states that on March 15, an Air Force airman accepted several packages from the UPS driver at the Transportation Building, but the airman does not specifically recall whether Great Plains's bid package was among them.¹

¹The agency questions the accuracy of the UPS delivery records since agency delivery records show receipt of the bid package on March 18. Although the airman's signature appears next to the package's UPS shipping number on the UPS delivery log for March 15, the record shows that the airman signed once for several packages, and that the signature alleged to be given upon receipt of the protester's bid package is nothing more than a computer generated copy of the sole signature obtained.

The agency emphasizes that there were no impediments to proper delivery of any bid packages to the identified 90th Contracting Squadron address on the date of the scheduled bid opening, and that other commercial carrier companies properly delivered packages to the stated bid receipt location on the date of, and prior to, the scheduled bid opening. The agency states that although there was a security exercise in effect on the date of bid opening, there were no additional procedures that a commercial carrier had to deal with on that date to deliver a bid package to the proper location specified in the solicitation; an agency employee was positioned at the entrance of the 90th Contracting Squadron Building to promptly receive such packages. The agency also emphasizes that the UPS driver admits he never attempted delivery at the proper location for receipt of bids under the IFB, despite that address being on the protester's bid package, but rather decided, on his own initiative, to deliver the protester's package along with several other packages (addressed to other locations on the base) to the Transportation Building.

As a general rule, a bidder is responsible for delivering its bid to the proper place at the proper time; a bid is late if it does not arrive at the office designated in the solicitation by the time specified. See Martin G. Imbach, Inc., B-224536, Feb. 25, 1987, 87-1 CPD ¶ 215. Where, as here, a bid is delivered by a commercial carrier, the bid is regarded as a hand-carried bid. A late hand-carried bid may be considered where the protester shows that improper action on the part of the government is the sole or paramount cause of the bid's late receipt, such as where the delivery person attempts to deliver a hand-carried bid to the place designated for receipt but is prevented by government personnel from doing so. See Inland Marine Indus., Inc., B-233117, Feb. 16, 1989, 89-1 CPD ¶ 165. There is no showing of such improper action here.

First, the record contains no corroborating evidence from a source other than UPS to support the contention of delivery of the protester's bid package on March 15; the agency's own records, although considered inaccurate by the protester, show delivery occurred on March 18, 3 days after bid opening. This lack of corroborating evidence of the time of alleged receipt alone provides a basis for denial of the protest. See J.C.N. Constr. Co., Inc., B-270068; B-270068.2, Feb. 6, 1996, 96-1 CPD ¶ 42; Qualimetrics, Inc., B-213162, Mar. 20, 1984, 84-1 CPD ¶ 332.

Second, even if delivery did take place on March 15, the protester's contention that delivery to the Transportation Building was appropriate due to the ongoing security exercise on the base is not reasonably supported by the record. Although the UPS driver contends that he has delivered packages to this freight terminal during past base exercises, there is no evidence in the record of any agreement between the agency and the commercial carrier permitting delivery of bid packages to other than the specified location for receipt of those bids unless delivery at the specified

location was impeded or unsuccessful. Thus, in this case there is no question that the bid was delivered to the wrong location solely because of the UPS driver's own decision to deliver to the freight terminal.

In this regard, even though the package was marked by the sender for immediate delivery for a 2 p.m. bid opening (without specifying a date for such bid opening), the freight terminal personnel reasonably may not be accustomed to the time-sensitive nature of bids and could not reasonably be expected to ensure delivery of the bid package to the proper location by the time of bid opening. See Work Sys. Design, Inc., B-223942, Nov. 26, 1986, 86-2 CPD ¶ 613.

In short, the record in this case demonstrates that through no fault of the government, the UPS driver misdelivered the bid package upon his own initiative and in doing so significantly contributed to the bid's late receipt at the proper location. Consequently, we have no basis to question the propriety of the agency's rejection of the bid.

The protest is denied.

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